

REPRESENTING CHILDREN IN CONNECTICUT

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SELECTED CASES

Skubas v. Skubas, 31 Conn. Sup. 340 (1974)

Where custody of minor child is in actual controversy, it is in child's best interests to appoint independent counsel for him.

Ridgeway v. Ridgeway, 180 Conn. 533 (1980)

Whether or not to appoint GAL to protect interests of minor child is within Court's discretion. Court cites Conn. Gen. Stat. § 46b-54 (re appointment of AMCs) as authority re GAL.

Yontef v. Yontef, 185 Conn. 275 (1981)

In the absence of "strong countervailing considerations such as physical urgency or financial stringency," the "better course" is to appoint independent counsel "whenever the issue of child custody is seriously contested." Court may appoint *sua sponte* in the absence of a request by a party.

Schaffer v. Schaffer, 187 Conn. 224 (1982)

"The purpose of appointing counsel for a minor child in a dissolution action is to ensure independent representation of the child's interest and such representation must be entrusted to the professional judgment of appointed counsel within the usual constraints applicable to such representation."

Gennarini v. Gennarini, 2 Conn. App. 132 (1984)

Court may not interview child outside presence of parties and counsel absent agreement. Should be on the record. Child's hearsay may be admissible as showing child's emotional reactions or state of mind. In footnote, trial court criticized for failing to appoint an AMC in "this protracted and bitterly contested visitation dispute," calling such an appointment "the better practice."

Weinstein v. Weinstein, 18 Conn. App. 622 (1989)

Trial court's order that AMC would, in absence of agreement by parents, determine which postjudgment expenses would be shared equally and on which evening a midweek visit would be held was an improper delegation of judicial function. "According to § 46b-54(c), the role of counsel is to advocate, not adjudicate." Case remanded for orders as required, and on remand, "the trial court should also reconsider...the order appointing [the AMC] to act as counsel for the minor children postjudgment..."

G.S. v. T.S., 23 Conn. App. 509 (1990)

Where trial court made aware of allegations that child has been abused, it is abuse of discretion not to appoint counsel for minor child

Knock v. Knock, 224 Conn. 776 (1993)

AMC and mom's counsel appealed, claiming that trial court admonished AMC for making objections and for failing to remain "neutral" until the close of evidence. Court declines to decide whether the minor child is a party. "The legislature has not delineated, nor has this court yet been presented with the opportunity to delineate, the obligations and limitations of the role of counsel for the minor child. We recognize that representing a child creates practical problems for an attorney and that this important issue, at some point, needs to be addressed."

Taff v. Bettcher, 35 Conn. App. 421 (1994)

Parent lacks standing to assert child's right to have child's attorney present; when court appoints counsel for child, representation is child's entitlement, not parent's.

Jaser v. Jaser, 37 Conn. App. 194 (1995)

Trial court has discretion to determine extent of child counsel's role; appointment is a general appointment unless and until court limits it. Strong footnote suggests child counsel's presence is mandatory before the trial court and at the appellate level unless appointment is limited.

Newman v. Newman, 235 Conn. 82 (1995)

Discusses distinctions between AMC and GAL roles: "Typically, the child's attorney is an advocate for the child, while the guardian ad litem is the representative of the child's best interests." Creates limited right to party status and for child's counsel to appeal from support orders so long as the court deems it to be in the child's best interests. "[T]he fact that, in the trial court, the law deems it sufficient to protect those interests by way of an appointment of an attorney, rather than also requiring a simultaneous appointment of a guardian ad litem or the naming of a next friend, is an implicit recognition that, under most circumstances, that attorney is an appropriate adult to provide such protection."

Lord v. Lord, 44 Conn. App. 370 (1997)

Parent lacked standing to raise claim on behalf of minor child that child's attorney should be dismissed. Parent did not claim that request was made to prevent prejudice to his own case.

Schult v. Schult, 241 Conn. 767 (1997)

Where a child has both an attorney and a guardian ad litem, it may be permissible for the AMC to advocate a position different from the GAL so long as the court deems it to be in the child's best interests

Lowe v. Lowe, 47 Conn. App. 354 (1997)

Parent lacked standing to claim error for failure to appoint separate counsel for each child due to claimed conflict. No claim that failure to appoint separate counsel would prejudice parent's own case.

Ireland v. Ireland, 246 Conn. 413 (1998)

Attorney for the minor child is not a witness and shall be heard in the usual fashion for attorneys. Resolution of the issue does "not require, however, a complete delineation of the role of the attorney for the minor child." "This is not to say that an attorney for a child should not be heard regarding the child's best interests. The legislature has deemed such input to be relevant."

Roth v. Weston, 259 Conn. 202 (2002)

In light of Troxel v. Granville, 530 U.S. 57 (2000), § 46b-59 (re third party visitation) is "unconstitutional as applied to the extent that the trial court, pursuant to the statute, permitted third party visitation contrary to the desires of a fit parent and in the absence of any allegation and proof by clear and convincing evidence that the children would suffer actual, significant harm if deprived of the visitation." Set "[a]dmittedly high hurdle[s]" to establish standing for third parties seeking visitation: (1) allege and establish a "parent-like relationship," and (2) "an allegation, along with proof thereof, that the parent's decision regarding visitation will cause the child to suffer real and substantial emotional harm." "[T]he only level of emotional harm that could justify court intervention is one that is akin to the level of harm that would allow the state to assume custody under General Statutes §§ 46b-120 and 46b-129--namely, that the child is "neglected, uncared-for or dependent" as those terms have been defined." "In light of the compelling interest at stake, the best interests of the child are secondary to the parents' rights." "Because parenting remains a protected fundamental right, the due process clause leaves little room for states to override a parent's decision even when that parent's decision is arbitrary and neither serves nor is motivated by the best interests of the child." GAL did not brief or argue in Appellate or Supreme Courts.

In re Tayquon H., 76 Conn. App. 693 (2003)

Relation of GAL to AMC when both appointed. "The duties of the guardian ad litem, however, are contextually specific to the case at hand, and the scope of those duties should be set by the trial court judge and communicated to the guardian ad litem." "Menu of responsibilities" from which Court should articulate contextually specific duties for GAL (and AMC when both appointed). "When both a guardian ad litem and an attorney have been appointed for a child...the guardian ad litem should refrain from acting as a second attorney for the child. Just as it is not normally the province of the attorney to testify, it is not the province of the guardian ad litem to file briefs with the court." If only AMC appointed, presumption that AMC is "proper person to fill the role of guardian for a particular legal action" unless AMC

believes conflict. Appointed GAL supersedes role of natural guardian to speak for the child's best interest in the litigation.

Ruggiero v. Ruggiero, 76 Conn. App. 338 (2003)

Court may order payment of GAL's fees pursuant to Conn. Gen. Stat. § 46b-62 (governing payment of attorney's fees).

Lamacchia v. Chilinsky, 79 Conn. App. 372 (2003)

Allocation of GAL fees awarded pursuant to § 46b-62 requires consideration of § 46b-82 criteria. Improper to assign responsibility for payment of future GAL fees.

Nashid v. Andrawis, 83 Conn. App. 115 (2004)

At dissolution trial, parties agreed to AMC's proposed orders, which included requirement that parties submit all future disputes to AMC for binding arbitration. On appeal, Court reviewed on basis of plain error doctrine. Lack of limitation of issues to be submitted, breadth of arbitrator's authority, and limited right to court review "circumvents the court's role in implementing its judgment" and is an improper delegation of the court's authority to the AMC.

Carrubba v. Moskowitz, 274 Conn. 583 (2005)

Parent lacked standing to bring claim of legal malpractice against AMC on behalf of child as child's next friend. AMC entitled to absolute quasi-judicial immunity with respect to actions within scope of representation. Court-appointed attorney for child has "hybrid role": (1) acting as child's counsel; (2) acting to support best interests of child, similar to GAL. Where there is a conflict, advocacy "must always be subordinated to the attorney's duty to serve the best interests of the child."

Fish v. Fish, 90 Conn. App. 744 (2005)

Post-judgment award of joint custody to mother and paternal aunt, with primary residence to aunt. Roth jurisdictional pleading requirements and heightened burden of persuasion for third parties seeking visitation "are inapposite" to contested custody case. § 46b-56a re joint custody construed. Where trial court, in decision on postjudgment custody modification, "clearly anticipated the likelihood of contention in the scheduling of visitation," "[i]t is a sound exercise of the court's discretion in high conflict custody disputes to have the guardian ad litem remain appointed on a kind of standby basis to aid in the implementation of court orders even after the specific proceedings have closed." GAL first appointed in 2001; same person appointed to serve concurrently as AMC in 2002.

Gil v. Gil, 94 Conn. App. 306 (2006)

Post-judgment Motion for Contempt in which GAL exercised child's privilege to block testimony by child's treating psychologist. "Here, there is no indication that the child's legal interests and psychological interests were at odds. Further, the child

was not represented by counsel during the contempt and modification of visitation proceedings. The guardian ad litem in this case was in the best position to evaluate and to exercise the child's confidentiality rights.^(fn11) Consistent with § 52-146c (b), the guardian ad litem invoked the child's privilege.” GAL sought and was granted permission to argue in Appellate Court.

Stahl v. Bayliss, 98 Conn. App. 63 (2006)

Parents entered a *pendents lite* custody and visitation stipulation including an agreement to bifurcate the financial issues and requested it be incorporated into the final judgment. Court incorporated custody and visitation stipulation into final judgment after trial on the financial issues a year later without further inquiry into children's best interests at time of trial. Held: it was an abuse of the Court's discretion not to ascertain that the earlier stipulation was in the children's present best interests. On remand, Court must also consider child support and alimony orders because the issues of finance and custody are inextricably entwined.

Payton v. Payton, 103 Conn. App. 825 (2007)

Mother appealed from post-dissolution award of physical custody to Father based, in part, on Court's failure to appoint an AMC. Not an abuse of discretion because Court did appoint a GAL and neither party requested an AMC. Cites Lambert v. Donahue, 78 Conn App 493 (2003) about discretionary nature of appointment of AMC and failure to appoint is generally not such a clear abuse of discretion that a party would be entitled to reversal on that ground.

Rubinstein v. Rubinstein, 107 Conn. App. 488, cert. den. 289 Conn. 948 (2008)

No abuse of discretion in awarding GAL fees when billing included time spent in JV court, certain “non-legal” tasks, travel, and associates' time, where (1) reasonableness of the fees was weighed by “standards typically employed in this forum” and pertinent factors from Ernst v. Deere & Co., 92 Conn. App. 572 (2005), and (2) allocation was based on consideration of financial resources of parties pursuant to § 46b-62 and § 46b-82 criteria.

Kennedy v. Kennedy, 109 Conn. App. 591 (2008)

One of a number of appeals between these parties. Father appealed from the post-judgment appointment of separate counsel for the parties' minor children upon motion by the then-AMC for both children. Held appointment of AMC is not a final decision for purposes of appeal. In earlier appeal, Kennedy v. Kennedy, 88 Conn App 442 (2005), Father appealed from denial of his motion for contempt alleging Mother's non-compliance with visitation orders. Court appointed GAL for children but denied Father's motion before hearing from the GAL. Abuse of discretion to decide motion without determining whether Mother kept the children from the visit or children refused to visit. Footnote restates court's concern stated in prior appeal at 83 Conn App 106 (2004) about failure to appoint counsel for children in such a seriously contested case.

Johnson v. Johnson, 111 Conn. App. 413 (2009)

GAL's testimony in contempt proceeding of what he was told by physician and family therapist was impermissible hearsay. Court and both parties considered him to be an expert witness. "Even if we assume that a guardian ad litem may in some circumstances testify as an expert witness, ...[the GAL] never stated an opinion or made any recommendations stemming from that role."

STATUTES

Conn. Gen. Stat. § 46b-54	Counsel for minor children. Duties.
Conn. Gen. Stat. § 45a-132	Appointment of guardian ad litem for minors and incompetent, undetermined and unborn persons
Conn. Gen. Stat. § 46b-62	Orders for payment of attorney's fees in certain actions. See also §46b-82 and <u>Ernst v. Deere & Co.</u> , 92 Conn. App. 572 (2005)
Conn. Gen. Stat. § 46b-129a	Appointment of counsel and guardian ad litem. (JV matters)
Conn. Gen. Stat. § 46b-136	Appointment of attorney. (JV matters)
Conn. Gen. Stat. § 45a-621	Appointment of guardian ad litem (Probate Guardianship proceedings)

PRACTICE BOOK

P.B. §25-62	Appointment of Guardian <u>Ad Litem</u>
P.B. §32a-1(b)(2)	Appointment of counsel (JV matters)
P.B. §32a-7(4)	Appointment of counsel (JV matters)

ETHICAL PROVISIONS

Rules of Professional Conduct

Rule 1.2	Scope of Representation
Rule 1.4	Communication
Rule 1.14	Client Under a Disability
Rule 1.8(f)	Conflict of Interest: Prohibited Transactions
Rule 5.4(c)	Professional Independence of a Lawyer

Model Code of Professional Responsibility

E.C. 7-12	"If a client under a disability..."
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CBA Informal Opinions

94-29	Service as Attorney for Minor Child in Dissolution Case
97-35	Obligation to Parents When Representing Minor Child

SUGGESTED READING

CBA Family Law Section Committee on the Role of Counsel, *Counsel for Children: Guidelines for Courts and Counsel in Civil Custody Cases*, 56 Connecticut Bar Journal 485 (1982)

(A report adopted by the Section but not codified)

CBA Family Law Section Committee, *Report of the Committee on the Role of Counsel for Minor Children in Dissolution Actions*, 6 Connecticut Family Lawyer No. 4 1 (Winter 1991)

(A report--and a minority report--neither of which was adopted by the Section or codified)

American Academy of Matrimonial Lawyers, *Representing Children: Standards for Attorneys and Guardians ad Litem in Custody or Visitation Proceedings*, 13 J. Am. Acad. Matrim. Law 1 (1995)

Haralambie, A., Glaser, D., *Practical and Theoretical Problems with the AAML Standards for Representing 'Impaired' Children*, 13 J. Am. Acad. Matrim. Law 57 (1995)

American Bar Association Section of Family Law, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, 29 Fam. L. Q. 275 (1995)

(http://www.abanet.org/family/reports/standards_abuseneglect.pdf)

American Bar Association, Section of Family Law Standards of Practice for Lawyers Representing Children in Custody Cases, 37 Fam. L.Q. 126 (2003)

(http://www.abanet.org/family/reports/standards_childcustody.pdf)

Commission on Child Protection, State of Connecticut, *Connecticut Standards of Practice for Lawyers Representing Children in Child Protection Cases* (2006)

(http://www.ct.gov/ccpa/lib/ccpa/Final_StandardsKids_12-27-06.doc)

Connecticut Family Lawyer (June 2007) Entire issue devoted to representing children.

C. Kaas and S. Dornfeld, *Advocating for Connecticut's Children During Their Parents' Divorces and Custody Disputes After Carrubba v. Moskowitz: The Past, the Present and the Future State of the Law for Attorneys for Minor Children and Guardians Ad Litem*, 81 Conn. B. J. 229 (2007)